

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAUL JOHN BELLINA	:	CIVIL ACTION
	:	
v.	:	NO. 06-2201
	:	
SUPERINTENDENT GEORGE PATRICK, <u>et</u>	:	
<u>al.</u>		

ORDER

AND NOW, this 6th day of October, 2006, upon careful and independent consideration of the pleadings and the record herein, and after review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice (docket no. 9) and Petitioner's objections thereto (docket no. 10), it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. The Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, is **DISMISSED** without prejudice for failure to exhaust state remedies;¹
3. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.

¹ The Court finds that the conclusions drawn by Magistrate Judge Rice regarding failure to exhaust state remedies are sound. According to the state court docket for Commonwealth v. Bellina, Case No. 735 EDA 2006, Petitioner's appeal still is pending before the Superior Court of Pennsylvania. Although Petitioner filed Objections to the Report and Recommendation, Petitioner did not refute Magistrate Judge Rice's conclusions with respect to the exhaustion issue.